

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD**

REGIONAL BENCH, COURT NO. 2

EXCISE APPEAL NO. 12245 OF 2019

[Arising out of OIA-BHV-EXCUS-000-APP-038-039-2019 dated 15/02/2019 passed by
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

SHRI RAJENDRA PYARELAL AGRAWAL, PARTNER

Appellant

M/s, Bhagyalaxmi Steel Industries,
Survey No. 174, Plot No. 27 to 30, Mamsa, Village – Ukharla,
Taluka – Ghogha,
District – Bhavnagar,
Gujarat

Vs.

COMMISSIONER CENTRAL GST & CENTRAL EXCISE

Respondent

Plot No.67-76/B-1, Narayan Upadhyay Marg,
Bhavnagar, Gujarat-364001

WITH

EXCISE APPEAL NO. 12246 OF 2019

[Arising out of OIA-BHV-EXCUS-000-APP-038-039-2019 dated 15/02/2019 passed by
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

BHAGYALAXMI STEEL INDUSTRIES

Appellant

M/s, Bhagyalaxmi Steel Industries,
Survey No. 174, Plot No. 27 to 30, Mamsa, Village – Ukharla,
Taluka – Ghogha,
District – Bhavnagar,
Gujarat

Vs.

COMMISSIONER OF CENTRAL GST & CENTRAL EXCISE

Respondent

Plot No.67-76/B-1, Narayan Upadhyay Marg,
Bhavnagar, Gujarat-364001

Appearance:

Shri Rahul Gajera, Advocate for the Appellant

Shri Anand Kumar, Superintendent (AR) for the Respondent

CORAM:

HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10512-10513/2025

Date of Hearing : 04.03.2025
Date of Decision : 30.06.2025

These appeals are directed against the impugned Order-in-Appeal passed by the learned Principal Commissioner (Appeals) Rajkot dated 14th February, 2019 through which the learned Principal Commissioner upheld the Order-in-Original passed by the Assistant Commissioner Central Goods and Service Tax Division Bhavnagar dated 22nd December, 2017 and rejected the appeals.

1.1 The facts of the case in brief are that show cause notice F. No. V/15-45/Dem/HQ/2015-16 dated 5th June, 2015 was issued to the appellant No. 1 Bhagyalaxmi Steel Industries and appellant No. 2 Shri Rajendra Pyarelal Agrawal for clearance of M.S. Round/TMT bars clandestinely to various customers. Following allegations were levelled against the appellants:-

- (a) Appellant No. 1 Bhagyalaxmi Steel Industries had clandestinely manufactured and cleared their finished excisable goods, namely, M.S. Round/TMT Bars attracting Central Excise duty of Rs. 20,36,913/- to various customers without issuing the invoices and without payment of Central Excise duty;
- (b) The appellant No. 2 Shri Rajendra Pyarelal Agrawal partner of appellant No. 1, concerned himself in selling, storing, keeping and removing of the excisable goods which he knew and had reason to believe that the same were liable to confiscation, which has made him liable to penalty under Rule 26 of the Central Excise Rules, 2002.

1.2 The above mentioned show cause notice was adjudicated by the lower adjudicating authority vide the order dated 22.12.2017 confirming demand of Central Excise duty of Rs. 20,36,913/- against appellant No. 1 under Section 11A(10) of the Central Excise Act, 1944 along with interest on the confirmed demand under Section 11AA of the Act and imposed penalty of Rs. 20,36,913/-. Upon appellant No. 1 under Section 11AC(1) of the Act with

benefit of reduced penalty and also imposed penalty of Rs. 2,00,000/- upon appellant No. 2 under Rule 26(1) of the Rules.

2. Being aggrieved with the Order-in-Original passed by the Assistant Commissioner dated 22nd December, 2017, appellants No. 1 & 2 preferred appeals before the Principal Commissioner (Appeals). The learned Principal Commissioner came to the conclusion that the department has adduced sufficient oral and documentary corroborated evidence to demonstrate that the appellants were engaged in clandestine removal of the goods. Therefore, the confirmation of demand of Central Excise duty of Rs. 20,36,913/- by the lower Adjudicating Authority is correct, legal and proper. Thus, he upheld the impugned order regarding the demand of Central Excise duty to the tune of Rs. 20,36,913/- along with interest. The learned Principal Commissioner also came to the conclusion that imposition of penalty upon appellant No. 2 under Rule 26 (1) of the rules is correct legal and proper. Thus, he rejected the appeals.

3. Feeling aggrieved from the impugned Order-in-Appeal passed by the learned Principal Commissioner dated 14th February, 2019 the present appeals have been preferred before this Tribunal.

4. The learned counsel for the appellant argued that the main appellant M/s. Bhagyalaxmi Steel Industries, on whom duty demand was confirmed, has been granted Form-4 on 13th February, 2020 under the Sabka Vishwas Scheme (SVLDRS). Therefore, appeal of the appellant Bhagyalaxmi Steel Industries is liable to be withdrawn in view of form-4 having being granted to the appellant. It has also been submitted by the learned counsel for the appellant that since, the appeal of the main appellant is being withdrawn, having been settled under SVLDRS, appeal of Shri Rajendra P. Agrawal who is partner of main appellant merits to be allowed. Reliance has been placed on the decision in appellant's own case in Final Order No. 10089/2025 dated 5th

February, 2025. It has been held in that decision that, when matter of the main appellant, on whom duty demand has been confirmed, has been settled under SVLDRS form-4, appellant, who is the co-noticee in the matter on whom penalty is confirmed is eligible for the benefit. In that view, appeals of the appellants merits to be allowed.

4.1 The learned counsel for the appellant submitted a copy of form n. SVLDRS-4 and copy of order of this Tribunal passed in Excise Appeal No. 10656 of 2016 **Rejendra P. Agrawal vs. CCE & ST Ahmedabad** Final order No. 10089/2025 along with written submissions. I have gone through these documents. In form SVLDRS-4, it has been mentioned that the appellant Bhagyalaxmi Steel Industries has deposited Rs. 4, 07,378.90 under SVLDRS scheme, being the amount determined by the designated committee under Section 126 of Finance (2) Act, 2019 and the declarant has filed appeal before CESTAT Ahmedabad against any order in respect of the tax imposed and whereas the said appeal is deemed to be withdrawn in accordance with the provisions of sub-Section 6 of Section 127 of the Finance (2) Act, 2019. In these circumstances, I am of the view that Excise Appeal No. 12246 of 2019 **Bhagyalaxmi Steel Industries vs. CCE & ST Bhavnagar** is deemed to have been allowed by the CESTAT and the demand of Central Excise duty and penalty from appellant Bhagyalaxmi Steel Industries is hereby set aside.

5. As far as, appeal No. E/12245/2019 **Shri Rajendra P. Agrawal vs. CCE & ST Bhavnagar** is concerned, the learned counsel for the appellant submitted order passed in Excise Appeal No. 10656 of 2016 dated 5th February, 2025 in which this Tribunal has held that in view of the final order in **Prakash Steelage Limited vs. CCE & ST Bharuch** (Final Order No. 12591-12595/2024 dated 5th November, 2024) now, it is settled that once the duty demand case is settled under SVLDRS-2019, as per scheme itself, there is a waiver of penalties on the main assessee against whom, the demand was confirmed as well as on other co-noticees. In **Anil K. Modani** case vide Final

Order No. A/87176-87178/2023 dated 13.11.2023 and **Subhash Panchal** vide Final Order No. 11014 of 2024 dated 08.05.2024, it has been held that where the main case is settled under SVLDRS, the penalties in respect of other co-noticees will not sustain even if they have not filed a declaration under SVLDRS-2019. Decision in the case of **Four R Association and others** reported as 2023 (11) TMI 9 CESTAT-Chennai has been delivered by Single Member Bench whereas the decisions in **Subhash Panchal** and **Anil K. Modani** cases have been delivered by Division Bench. Therefore, the Division Bench judgment shall prevail over Single Member Bench.

In view of the order mentioned above delivered in **Rajendra P. Agrawal** case, I am of the view that when appeal of the main appellant – Bhagyalaxmi Steel Industries has been allowed and the order regarding demand of Central Excise Duty and penalty imposed by the lower Adjudicating Authority and the Commissioner have been set aside, it appears just and proper that penalty imposed on co-noticee Shri Rajendra P. Agrawal should also be set aside and his appeal is liable to be allowed.

7. Appeal No. E/12245/2019 and E/12246/2019 filed by Rajendra P. Agrawal and Bhagyalaxmi Steel Industries are allowed and the impugned order passed by the Principal Commissioner (Appeals) dated 14th February, 2019 and order dated 22.12.2017 passed by the first Adjudicating Authority are set aside.

(Order pronounced in the open Court on 30.06.2025)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)